

California Regional Water Quality Control Board  
Santa Ana Region  
Staff Report  
March 12, 2004

**ITEM: 11**

**SUBJECT:** Order No. R8-2004-0035 Affirming Administrative Civil Liability Complaint No. R8-2004-0022, Brookfield Homes Southland, Incorporated, Fullerton, Orange County

**BACKGROUND**

On February 18, 2004, the Executive Officer issued Administrative Civil Liability Complaint (ACL) No. R8-2004-0022 (copy attached) to Brookfield Homes Southland, Inc. (Brookfield) for alleged violations of the State General Permit for Storm Water Runoff Associated with Construction Activity (General Permit). In the ACL, the Executive Officer proposed an assessment of \$50,000 for the alleged violations.

**INTRODUCTION**

The matter before the California Regional Water Quality Control Board, Santa Ana Region (Board), is whether to affirm, reject, or modify the proposed administrative civil liability assessment against Brookfield.

ACL No. R8-2004-0022 was issued by the Executive Officer to Brookfield for its failure to develop and implement an effective Storm Water Pollution Prevention Plan (SWPPP) and failing to implement an effective combination of erosion and sediment control Best Management Practices (BMPs) for the elimination or reduction of pollutants and failing to perform appropriate monitoring of those BMPs before and during a predicted rain event. These failures resulted in the discharge of sediment-laden storm water to the local municipal storm sewer system.

**DISCUSSION**

The General Permit regulates the discharge of storm water from construction sites as required under Section 402(p) of the Federal Clean Water Act. Coverage under the permit is obtained by filing a Notice of Intent (NOI), site map, and fee with the State Water Resources Control Board. Brookfield filed a NOI and obtained coverage under the General Permit on October 9, 2001, WDID 8 30S316718. The project is known as Amerige Heights and is located on the southeast corner of North Gilbert Street and Pioneer Avenue in the City of Fullerton.

According to the site's NOI submitted by Brookfield, construction commenced on October 1, 2001 on 21 acres.

On October 2, 2003, Board staff (staff) conducted a joint inspection of the subject site with inspectors from the City of Fullerton. City of Fullerton staff had requested this joint inspection based on Brookfield's lack of response to repeated efforts by City staff to bring the site into compliance with State and City requirements. During this inspection, staff observed that the BMPs implemented at the site were ineffective due to damage or deterioration. All six catch basin inlets at the site lacked adequate protection to reduce the discharge of sediment or other pollutants to the local storm drain system. Evidence of previous unauthorized non-storm water discharges was noted at several of these unprotected catch basin inlets. Large amounts of sediment and construction debris were stored directly on top of catch basin inlets and damaged sand bags resulted in the discharge of sediment, trash and construction debris, directly into the local storm drain system. Staff informed the site superintendent that the site was in violation of the General Permit and that an effective combination of sediment and erosion controls (as identified in the site Storm Water Pollution Prevention Plan (SWPPP)) needed to be implemented immediately and be well maintained, housekeeping practices needed major improvement and that all necessary training and inspections needed to be performed.

On October 6, 2003, staff and City inspectors performed a follow-up inspection. During this inspection, staff observed that there had been some minor improvements in BMPs at the site. However, an effective combination of erosion and sediment control BMPs had still not been implemented and the site was still in violation of the General Permit. At this time, City inspectors issued a stop work notice for the site. Again, staff spoke with the site superintendent, instructing him to implement all aspects of the SWPPP. A Notice of Violation describing these violations was issued on October 22, 2003.

On November 13, 2003, the day after a moderate storm event, staff conducted an inspection of the site. During this inspection, staff observed that there were still no effective BMPs implemented to prevent sediments and other pollutants from entering the storm drain system. Mounds of sediment were stored next to unprotected inlets. Trash and construction debris were scattered around the site. Site conditions demonstrated that qualified personnel had not conducted a pre-storm inspection on November 12, 2003, to ensure that BMPs were properly installed and maintained and had not conducted a post-storm inspection on November 13, 2003, to determine the effectiveness of BMP performance and perform needed BMP maintenance. Staff again spoke with the site superintendent regarding the importance of implementing adequate BMPs and conducting the required pre-storm and post-storm inspections that were listed in the site SWPPP. A second Notice of Violation was issued on December 3, 2003.

Brookfield Homes violated General Permit Provisions C.2 ("All dischargers shall develop and implement a SWPPP in accordance with Section A: Storm Water Pollution Prevention Plan.") and C.4 ("All dischargers shall develop and implement a monitoring program and reporting plan in accordance with Section B: Monitoring Program and Reporting Requirements."). In addition, Section B.3 of the Monitoring and Reporting Requirements requires, "Qualified personnel shall conduct inspections of the construction site prior to anticipated storm events, during extended storm events, and after actual storm events...[p]re-storm inspections are to ensure that BMPs are properly installed and maintained; post-storm inspections are to assure that the BMPs have functioned adequately."

Pursuant to Water Code Section 13385(c)(2), civil liability may be administratively imposed for the preceding violations by a regional board in an amount not to exceed ten thousand dollars (\$10,000) for each violation that occurs each day. Additional liability, not to exceed \$10 per gallon, may be imposed for each gallon discharged in excess of 1,000 gallons. The volume of the unauthorized discharge could not be accurately assessed, but was estimated to be less than 1,000 gallons. Therefore the maximum civil liability that can be imposed is \$60,000 for a total of six violations. This is based on violations of General Permit Provision C.2 on October 2 and 6, 2003 (\$10,000 each day of violation) and Provisions C.2 and C.4 on November 12 and 13, 2003 (\$20,000 per day for two violations each day).

The Water Code specifies factors the Board shall consider in establishing the amount of civil liability. These factors are discussed below.

1. Nature, Circumstances, Extent and Gravity of the Violations

The discharger failed to implement an effective combination of sediment/erosion controls during construction in violation of the General Permit, in spite of repeated notices by staff to do so. Further, the discharger failed to conduct pre- and post-storm inspections of BMPs to insure that they were properly installed and maintained.

2. Ability to Pay the Proposed Assessment

The discharger has not provided any evidence to indicate that it would have difficulty paying the proposed assessment.

3. Prior History of Violations

Brookfield Homes has been issued two previous administrative civil liability complaints for other sites for similar violations, as well as having several Notices of Violation issued for poor SWPPP preparation and BMP implementation.

4. Degree of Culpability

The discharger is entirely culpable for the violations.

5. Economic Benefit or Savings, if any, Resulting from the Violations

Brookfield Homes saved approximately \$10,000 by not implementing and maintaining adequate BMPs as described in the site SWPPP.

**STATEWIDE ENFORCEMENT POLICY**

On February 19, 2002, the State Water Resources Control Board adopted a Revised Water Quality Enforcement Policy to ensure that enforcement actions throughout the State are fair, firm and consistent. The above-described administrative civil liability complaint is in accordance with the Statewide Enforcement Policy.

**RECOMMENDATION**

After consideration of the above factors, staff recommends that the Board adopt Order R8-2004-0035, affirming the assessment of \$50,000 specified in Administrative Civil Liability Complaint No. R8-2004-0022 issued by the Executive Officer on February 18, 2004.

STATE OF CALIFORNIA  
REGIONAL WATER QUALITY CONTROL BOARD  
SANTA ANA REGION

In the matter of:	)	
	)	
Brookfield Homes Southland, Inc.)	)	Order No. R8-2004-0035
3090 Bristol Street, Suite 200 )	)	for
Costa Mesa, CA 92626 )	)	Administrative Civil Liability
	)	
<u>Attention: Mr. Brian Geis</u> )	)	

The California Regional Water Quality Control Board, Santa Ana Region (hereinafter Board), held a hearing on March 12, 2004 to receive testimony and take evidence on the allegations contained in Complaint No. R8-2004-0022, dated February 18, 2004, and on the recommendation for the imposition of administrative civil liability pursuant to Water Code Section 13385 in the amount of \$ 50,000. The Board finds as follows:

1. On August 19, 1999, the State Water Resources Control Board (SWRCB) adopted Waste Discharge Requirements, Order No. 99-08-DWQ, (NPDES No. CAS000002), General Permit for Storm Water Discharges Associated with Construction Activity (Permit). Brookfield Homes Southland, Inc. (Brookfield), is authorized to discharge storm water from its Amerige Heights construction site, located on the southeast corner of North Gilbert Street and Pioneer Avenue in the City of Fullerton, under the Permit, WDID 830S316718. The Permit requires Brookfield to develop and implement a Storm Water Pollution Prevention Plan (SWPPP) and monitoring program and reporting plan that includes inspections of the construction site prior to anticipated storm events, during extended storm events and after actual storm events to ensure Best Management Practices (BMPs) are properly maintained and are adequate to control erosion and to prevent sediment discharges.
2. After repeated efforts by the City of Fullerton staff (City staff) to bring the site into compliance with State and City requirements met with lack of response, City staff requested that Board staff (staff) inspect the site. Staff inspected the site on three occasions. On October 2 and 6, 2003 staff observed, and pointed out to Brookfield staff, inadequate BMPs and poor housekeeping issues that resulted in violations of the Permit. A Notice of Violation was issued by staff on October 22, 2003. On November 13, 2003, following a moderate storm event the day before, staff again inspected the site and observed inadequate and inadequately maintained BMPs that had resulted in a discharge of sediment-laden storm water runoff. A second Notice of Violation was issued on December 3, 2003.
3. Water Code Section 13385(a)(2) provides that any person who violates waste discharge requirements shall be civilly liable. Section 13385(c) provides that civil liability may be administratively imposed by a regional board in an amount not to exceed ten thousand dollars (\$10,000) for each violation that occurs each day.

March 12, 2004

Additional liability, not to exceed \$10 per gallon, may be imposed for each gallon discharged in excess of 1,000 gallons.

4. On February 18, 2004, the Executive Officer issued Administrative Civil Liability Complaint No. R8-2004-0022 to Brookfield, proposing that the Board impose civil liability in the amount of \$50,000 on Brookfield for the violations cited above.
5. Issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 2100 et seq.) in accordance with Section 15321, Chapter 3, Title 14, California Code of Regulations.

IT IS HEREBY ORDERED that, pursuant to California Water Code Section 13385, administrative civil liability shall be imposed on Brookfield Homes Southland, Incorporated, in the amount of \$50,000 as proposed in Complaint No. R8-2004-0022 for the violations cited, payable as set forth below.

1. Brookfield shall pay the entire amount due to the State Water Resources Control Board by April 12, 2004.
2. The Executive Officer is authorized to refer this matter to the Attorney General for enforcement.

Pursuant to Water Code Section 13320, you may petition the State Water Resources Control Board for review of this Order. If you choose to do so, you must submit the petition to the State Board within 30 days of the Regional Board's adoption of this Order.

I, Gerard J. Thibeault, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an order adopted by the California Regional Water Quality Control Board, Santa Ana Region, on March 12, 2004.

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Gerard J. Thibeault  
Executive Officer